

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA, Plaintiff, v. DR. WILLIAM SILVA CHERENA Defendant.	CIVIL NO. 20-cv-1098 False Claims Act, 31 U.S.C. § 3729
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COMPLAINT

TO THE HONORABLE COURT:

COMES NOW the United States of America, by and through the undersigned attorneys,
and very respectfully alleges and prays:

INTRODUCTION

1. The United States files this action under the False Claims Act (“FCA”), 31 U.S.C. § 3279 et seq., to recover civil monetary penalties from the defendant’s false claims to the United States Department of Health and Human Services made in violation of federal law and applicable statutory provisions.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1345 and its general equitable jurisdiction; as well as subject-matter jurisdiction pursuant to 28 U.S.C. § 1331, since the civil action arises under the laws of the United States, in particular, 31 U.S.C. §§ 3729, 3730.

3. This Court has personal jurisdiction over Defendant, who resides within the District

of Puerto Rico.

4. Venue is proper in this District under 28 U.S.C. § 1391 and 31 U.S.C. § 3732(a).

Defendant can be found, resides, and transacts business within the District of Puerto Rico.

PARTIES

5. The plaintiff is the United States of America, on behalf of its Department of Health and Human Services, hereinafter referred to as “HHS”.

6. Defendant **William Silva Cherena**, hereinafter referred to as “Dr. Silva”, was at all times relevant, a General Practice physician licensed to practice medicine in the Commonwealth of Puerto Rico. Dr. Silva is also a resident of Puerto Rico. At all times relevant, Dr. Silva (NPI #1003884636) operated a private General Practice office located in the municipality of Sabana Grande, Puerto Rico. Dr. Silva was directly involved and participated in the daily operations of his medical office during the relevant period of time.

THE MEDICAID PROGRAM

7. Except as otherwise specifically noted, the allegations set forth below describe the Medicaid Program and other facts during the period relevant to this action, that is from on or about March of 2014 until October of 2018.

8. HHS, through its component agency, the Centers for Medicare and Medicaid Services, (hereinafter referred to as “CMS”), administers the national Medicaid Program.

9. The Medicaid Program is a medical assistance program jointly financed by state and federal governments for low income individuals and is embodied in 42 U.S.C. § 1396 et seq. (Medicaid and CHIP Payment and Access Commission). Together with the Children’s Health

Insurance Program (CHIP), it provides health coverage to millions of Americans, including children, pregnant women, parents, seniors, and individuals with disabilities. Medicaid is the single largest source of health coverage in the United States, and it was first enacted in 1965 as an amendment to the Social Security Act of 1965.

10. To participate in Medicaid, federal law requires states to cover certain groups of individuals. Low income families, qualified pregnant women and children, and individuals receiving Supplemental Security Income (SSI) are examples of mandatory eligible groups. Sec. 1931 [42 U.S.C. § 1396u-1]; Sec. 1902(a)(10)(A)(i)(III); 1905(n) [42 U.S.C. § 1396a]; Sec. 1902(a)(10)(A)(i)((II)(aa) [42 U.S.C. § 1396a]. States have additional options for coverage and may choose to cover other groups, such as individuals receiving home and community-based services and children in foster care who are not otherwise eligible.

11. The Affordable Care Act of 2010 (“ACA”) created the opportunity for states to expand Medicaid to cover all low-income Americans under age 65. It also established a new methodology for determining income eligibility for Medicaid, which is based on the Modified Adjusted Gross Income (“MAGI”). MAGI is used to determine financial eligibility for Medicaid, CHIP, and premium tax credits and cost sharing reductions available through the health insurance market.

12. States also have the option to establish a “medically needy program” for individuals with significant health needs whose income is too high to otherwise qualify for Medicaid under other eligibility groups. Medically needy individuals can still become eligible by “spending down” the amount of income that is above a state’s medically needy income standard. Individuals spend down by incurring expenses for medical and remedial care for which they do not have health insurance.

Once an individual's incurred expenses exceed the difference between the individual's income and the state's medically needy income level ("the spenddown amount"), the person can be eligible for Medicaid. The Medicaid Program then pays the cost of services that exceeds the expenses the individual had to incur to become eligible. Puerto Rico offers the eligibility option under the medically needy program. Sec. 1102, 42 U.S.C. § 1302. 42 C.F.R. § 436.

13. The Office of Inspector General of the Department of Health and Human Services ("HHS OIG"), through its Office of Investigations ("OI"), conducts criminal, civil and administrative investigations of fraud and misconduct related to HHS programs, operations and beneficiaries. HHS OIG operates an OIG Hotline, which allows the public, industry stakeholders, and others to report suspected fraud, waste and abuse. HHS OIG also works collaboratively with other components to develop appropriate enforcement actions and recommend fixes to aspects of HHS programs vulnerable to fraud.

STATEMENT OF FACTS

14. Between on or about March of 2014 and October of 2018, Dr. Silva assisted a number of patients fraudulently enroll in the Medicaid Program under the medically needy program. In order to make these patients eligible for the Medicaid Program, Dr. Silva prescribed unnecessary medications that the patients did not need in order to spenddown the income of these patients. Dr. Silva also assisted the patients with filling out the application forms for the Medicaid Program.

15. Once the patients became eligible for the Medicaid Program, the patients began to obtain subsequent medical treatment in Dr. Silva's office. Because these patients were now Medicaid Program's beneficiaries, the program began to cover their medical needs, to include utilization (office visits, medication) and capitation (premium) payments. As such, Dr. Silva assisted with the

provision of false statements and representations regarding eligibility criteria, such as false medical expenses, that resulted in the submission and subsequent payments of false claims under the FCA.

CLAIM FOR RELIEF

False Claims Act– 31 U.S.C. § 3729 (a) (1)

16. This is a claim for civil monetary penalties under the FCA, 31 U.S.C. § 3729 (a) (1).

17. Paragraphs 1 through 15 of this Complaint are hereby re-alleged and incorporated as though fully set forth herein.

18. As part of the scheme to defraud and described in the above referenced Paragraphs, Dr. Silva submitted and caused to be submitted on behalf of the patients over thirty-three (33) claims for utilization and capitation payments after Dr. Silva and the patients misrepresented core eligibility requirements during the enrollment process, that resulted in monetary losses to the United States. This also allows for these patients to fraudulently obtain health care services for which they would otherwise be ineligible, all in violation of 18 U.S.C. § 1347.

19. Under the FCA, a “claim” includes requests for money presented to agents of the United States or to a contractor, grantee or other recipient, if the money is to be used on the government’s behalf or to advance a government interest, as long as the United States provided any portion of the money requested.

20. Each of these false statements constitute a unique claim of provider fraud on a managed care organization, for which a civil monetary penalty must be assigned, as allowed by law in an amount ranging from \$11,181.00 to \$22,363.00 each.

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully requests that judgment be entered in its favor and against Dr. Silva as follows:

A. Enter judgment against Dr. Silva for treble damages and civil monetary penalties in the amount of \$650,000.00 under the FCA.

B. Grant the United States interests from the day of judgment and such other and further relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED,

In San Juan, Puerto Rico, this 20th day of February 2020.

W. STEPHEN MULDROW
United States Attorney

/s/ Jorge L. Matos
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Exhibit A: Civil Cover Sheet

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Jorge L. Matos, Assistant U.S. Attorney
U.S. Attorney's Office, 350 Chardon Avenue., Suite 1201
Hato Rey, Puerto Rico 00918

DEFENDANTS

William Silva Cherena

County of Residence of First Listed Defendant Sabana Grande, PR
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input checked="" type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
False Claims Act 31 U.S.C. Section 3729 et seq.

Brief description of cause:
Submission of False Claims Under the Medicaid Program

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
650,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

02/20/2020

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Exhibit B: Category Sheet

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

CATEGORY SHEET

You must accompany your complaint with this Category Sheet, and the Civil Cover Sheet (JS-44).

Attorney Name (Last, First, MI): Jorge L. Matos

USDC-PR Bar Number: 601307

Email Address: Jorge.L.Matos2@usdoj.gov

1. Title (caption) of the Case (provide only the names of the first party on each side):

Plaintiff: United States of America

Defendant: William Silva Cherena

2. Indicate the category to which this case belongs:

☒ Ordinary Civil Case

☐ Social Security

☐ Banking

☐ Injunction

3. Indicate the title and number of related cases (if any).

4. Has a prior action between the same parties and based on the same claim ever been filed before this Court?

☐ Yes

☒ No

5. Is this case required to be heard and determined by a district court of three judges pursuant to 28 U.S.C. § 2284?

☐ Yes

☒ No

6. Does this case question the constitutionality of a state statute? (See, Fed.R.Civ. P. 24)

☐ Yes

☒ No

Date Submitted: 2/20/20